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No. 10-782

Supreme Court, U.S.
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In The

Supreme Court of the United States

MOHAN THAMPI,

Petitioner,

v.

MANATEE COUNTY BOARD OF COMMISSIONERS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF

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INTRODUCTION

In its brief in opposition, the county raises new arguments on whether Mr. Thampi pled a retaliation claim, discusses so-called confidentiality procedures, and accuses Thampi of widespread misconduct. All are extremely misleading and false and raise genuine issues of material fact.

THAMPI ADEQUATELY PUT THE COUNTY ON NOTICE THAT HE PLED A RETALIATION CLAIM IN SEPTEMBER OF 2007

Manatee County raises in its brief indicates that Mr. Thampi had not yet pled a Title VII retaliation claim in September 2007 so therefore he could not have been retaliated against in his job application at neighboring Sarasota County. (Brief in Opposition at 20-22). As an initial matter, Thampi had an Equal Employment Opportunities Commission (EEOC) Claim pending at the time, a fact the county neglects to mention. The case was later stayed for several months pending resolution of this charge and issuance of an EEOC right to sue letter. (Doc. 32). Thampi only raises the issue that he actually pled for purposes of modern notice pleading general retaliation for filing his federal Section 1983 lawsuit in his Petition for Writ of Certiorari. (Petition at pp. 8-9).

Mr. Thampi also urges an adoption underlying the principles and logic stated in *CBOCS West, Inc. v. Humphries*, No. 06-1431 (U.S. 5/27/2008). In that case, this Court broadly applied retaliation to 42 U.S.C. Section 1981 claims, so why should that protection

also not be applied to section 1983, the operative claim as of September 2007 that was referred to as a civil rights claim in Thampi's personnel file? In fact it is common knowledge that litigants sue under Section 1983 for matters involving the First Amendment to the Constitution or due process violations.

The *Humphries* Court recently read another broadly worded statute [like Section 1983], namely Title IX of the Education Amendments of 1972 as including an anti-retaliation remedy even though such a remedy was not explicitly stated in the statute itself. *Id.* A similar construction is urged in the case at bar.

THE COUNTY'S SO-CALLED FAIL SAFE PROVISIONS TO PROTECT THE CONFIDENTIALITY OF THE CROCKETT INVESTIGATION FAILED

The county maintained it had in place procedures to ensure that Mr. Thampi's supervisor could not have known that Thampi came forward as witness in this case (Brief in Opposition at 6-7). This policy was not discussed in the Petition for Writ of Certiorari, yet is raised by the county. This "fail safe" procedure utterly failed and Thampi draws the Court's attention to the Petition at App. 66-68.

The Assistant County Attorney Sarah Schenk announced to **third parties** that Thampi was no longer with the County while he still had not yet been officially terminated. *Id.* at 68 (emphasis added). This assertion was made on January 31, 2007, yet Thampi was not fired until February 12, 2007. *Id.* at 4. Anyone,

including Mr. Hochuli, Thampi's supervisor, could have known. Simply because the county has a policy to keep investigations secret, does not mean those investigations cannot be leaked or carelessly revealed.

The county's memorandum also states that managers shall not have any access to witness statements, but it says nothing specifically about the identities of the witnesses themselves. (Brief in Opposition at 7).

The salient facts are that the county knew of the protected expression on the part of Thampi. It is logical and certainly expected that Mr. Thampi's supervisor, Mr. Timothy Hochuli knew himself. After all, Mr. Thampi agreed to be a witness for Deloris Crockett *openly* in the office of Mr. Hochuli. (Petition for Writ of Certiorari at 3) (emphasis added).

According to Crockett, Mr. Hochuli's top assistant, Marlene Marlatt called Thampi a *stinky smelly Muslim* and indicated he should be fired. (Doc. 60-1 at 19). The animus towards Thampi by the county was unmistakable and again raises genuine issues of material fact and strong inferences that Marlene Marlatt told Mr. Hochuli that Mr. Thampi agreed to be a witness for Crockett. The Eleventh Circuit ignored where the evidence pointed.

THE COUNTY'S ATTEMPT TO CAST A SWATH OF MISCONDUCT IS CONTRARY TO THE FINDINGS OF THE STATE OF FLORIDA

The new discussion before this Court raised about misconduct throughout a large portion of the

county's brief is misplaced. The State of Florida ruled in favor of Mr. Thampi in his state unemployment proceeding finding no evidence of misconduct. (Petition App. 73 at par. 13). Mr. Thampi was awarded unemployment benefits on March 8, 2007 with the determination that there was no misconduct as the County was unable to provide any evidence of misconduct.

The County never appealed this State ruling. Florida law indicates generally the definition of misconduct is acting in disregard to the employer's interest. *See* Fla. Stat. Sec. 443.036(29). This would seem to include insubordination. Why was the County so reticent to provide any evidence to the State, yet many months or years later they claim in their arguments Mr. Thampi's actions essentially constituted misconduct?

The county's tactic in its brief is no more than an effort to smear Thampi, an employee with an exemplary background. Still the never produced Christmas Day 2006 memo, purportedly accusing Thampi of insubordination or misconduct, which was never substantiated, lingers as nothing more than an attempt to smear (Petition for Writ of Certiorari at 4). The courts below ignored this memorandum.

Finally, in bringing up the testimony of Dan Grey and John Zimmermann, along with Jody Kirkman who rescinded his job offer to Mr. Thampi as a result of Manatee County's retaliation, the county fails to mention that the Assistant County Attorney wrote an affidavit for Kirkman in support of summary judgment

and that Mr. Kirkman blindly signed it; Messrs. Grey and Zimmerman retreated from their negative position against Thampi after being confronted with Kirkman's testimony in this case, once again raising genuine issues of material fact. (Doc. 60-1 at 9-16).

CONCLUSION

For the foregoing reasons (and those raised in the Petition itself), Mr. Thampi's Petition for Writ of Certiorari should be granted. **Unlike the County's position, it is Mr. Thampi's position that this Court establishes the law of the land and is not so limited in its power to provide relief.** (Brief in Opposition at 29) (emphasis added).

Swift justice is respectfully needed in this case since February of this year will mark the fourth (4th) year of Plaintiff's termination and the beginning of his legal battle for redress. As long as the unfounded charges by the county remain unaddressed, Mr. Thampi faces a bleak future for employment in his profession as an engineer.

Respectfully submitted,

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